full opportunity to develop their cases in some situations, especially with regard to complex damages issues.

MCI's only objection to these proposals is with respect to the tentative requirement that any complaint seeking an award of damages contain a detailed computation of such damages. Such a requirement would be inconsistent with the rationale for bifurcation, which recognizes that a complainant often does not have all of the information it needs to calculate its damages at the outset and requires discovery of the defendant to obtain it. MCI has found itself in this predicament more than once. Fortunately, the Commission has permitted MCI to fill its damages information gaps with such discovery.[21] If it had not done so, MCI would have been unable to substantiate its damages claims. Complainants must therefore be allowed to provide, in their complaints, a damages methodology, along with a description of the information they lack, as a substitute for a final damages figure. An absolute requirement of a final damages figure, without such a fallback, would constitute a fundamental due process violation.

H. Motions

MCI supports most of the proposals regarding motion practice, since they can be expected to make motion procedures more efficient and to eliminate unproductive diversions. One

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[21] See e.g., MCI Telecommunications Corp. v. Pacific Bell Tel. Co., et al., 7 FCC Rcd. 2985 (CCB 1992).

exception, however, is the proposal to disallow motions to amend complaints in most cases. The stated purpose of this proposal is to "require the complainant to ensure that the complaint is fully developed prior to filing."[22] That assumes, of course, that the complainant has some control over the amount of information available for the framing of a fully developed complaint. As explained above, however, a complainant often does not have access to all of the information needed to assert, or even be aware of, all of the claims it has against the defendant, and the defendant is not likely to provide such information voluntarily. A complainant in that situation should not be penalized for not being all-knowing right from the start. Prohibiting amendments to complaints where a complainant learns of new facts or a new cause of action would only serve to reward monopoly carriers for their withholding of information about their own violations of the Communications Act. Such actions should be remedied through the complaint process, not rewarded.

I. Confidential or Proprietary Information

MCI supports the proposals concerning information claimed to be confidential or proprietary. One additional point that should be made clear in the complaint procedures, however, is that any information claimed to be confidential due to its proprietary or sensitive financial or competitive nature should never be allowed

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[22] Notice at ¶ 78.

to be withheld from the other party on that ground.[23] It should be turned over to the other party, whether in response to discovery or otherwise, under the standard confidentiality agreement specified in the complaint rules. Otherwise, disputes as to the confidential nature of relevant information will take up the entire period of time permitted under the new deadlines for completion of various types of complaint proceedings, leaving no time for completion of discovery, briefing and resolution of the case.

J. Briefs

MCI opposes the elimination of briefing in cases where no discovery is conducted. Whether or not discovery is conducted may have little bearing on the need for briefing of the legal issues. Moreover, if the Commission were to eliminate briefing in such cases, that would require proposed findings of fact, conclusions of law and legal analysis in complaints and answers. Prior to the filing of both the complaint and answer, as well as the proposed joint statement of stipulated facts and key legal issues,[24] proposed findings of fact and conclusions of law would be pointless and unrevealing. Until each party has some idea of

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[23] Information claimed to be protected by privilege, however, such as the attorney-client privilege, should not have to be divulged to the other party, even under a confidentiality agreement.

[24] MCI supports the proposal to require such a joint statement early in the proceeding, although requiring such a filing five days after service of the answer is probably unrealistically optimistic. See Notice at ¶ 80.

the other's position, it is impossible to frame findings of fact and legal conclusions that would enable the Commission to choose between the parties' factual or legal positions.

Thus, requiring complaints and answers to contain proposed findings of fact and legal conclusions would hardly ever "expedite the proceeding and ... make briefs redundant."[25] Rather, once the parties' positions had become clear following the filing of the pleadings, joint stipulation and the holding of the initial status conference, the parties would then be in a position to brief the issues that actually divided them.

Rather than eliminating briefing in a certain category of cases, it would be more productive to retain the use of briefs, but with close supervision by Commission counsel over the scheduling, format and scope of briefs. The initial status conference should give Commission counsel an opportunity to tailor discovery and briefing to the needs of each individual case. Given the wide variety of time constraints imposed by the 1996 Act on different types of complaint proceedings, as well as the infinite variety of constraints imposed by the factual and other circumstances arising in individual cases, it would be almost impossible to establish any general briefing schedule or schedules in the Commission's procedural rules. Rather, Commission counsel should set the timetable and other aspects of briefing.

The only additional suggestion MCI would offer is that the

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[25] Notice at ¶ 81.

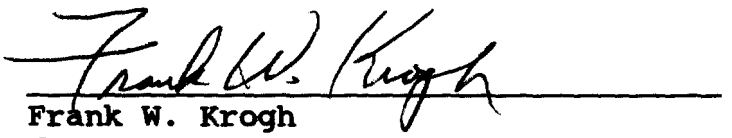
Commission should not continue to use simultaneous briefing. In MCI's experience, such a briefing format causes the parties to argue past each other, rather than engaging in the truly disputed points that need to be resolved. Instead, the Commission should follow the format used in federal courts. Thus, the complainant should file an initial brief, followed by the defendant's opposing brief, with the complainant filing a reply brief, with the scheduling to be determined by Commission counsel. That format, unlike simultaneous briefing, would force the parties to meet each others' arguments directly. If a complainant holds back an argument for the reply brief that should have been presented in the initial brief, the Commission can ignore it, just as federal courts do, thereby incenting the complainant to lay all of its cards on the table in the initial brief.

Conclusion

MCI supports the Commission's goals, stated in the Notice, of making the formal complaint process more expeditious, efficient and effective. For the most part, the proposals in the Notice will accomplish those goals. As explained above, some modifications in the proposals are necessary to protect parties' due process rights and to ensure that the complaint remedy is not undercut by overly stringent pleading or other unrealistic requirements. MCI accordingly requests that the Commission promulgate revised formal complaint rules consistent with these comments.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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